

1 CONTINUATION OF PROCEEDINGS

2 JUDGE ALBERS: For purposes of just for the
3 public portion of the transcript here, Mr. Fosco has
4 moved for the admission of the report discussed in
5 Mr. Sullivan's testimony. And, Mr. MacBride,
6 whether you want to repeat your statement for the
7 public record is up to you but suffice it to say you
8 object at this time to the admission of the entire
9 report.

10 MR. MacBRIDE: Yes.

11 MR. FOSCO: Your Honor, I think it is very
12 relevant. The Commission is being asked to approve
13 an asbestos liability cost. This is really the only
14 evidence as to what those costs might be expected to
15 be. We have testimony from this witness that he
16 sort of in a conclusory fashion says this report is
17 of little value, and I think that statement requires
18 the report with its full analysis which is fairly
19 detailed to be in the record for you and the
20 Commission to analyze. You know, to be honest we
21 are not trying to sand bag, we are not trying to --
22 I honestly don't have any intent in the brief of --

1 JUDGE ALBERS: I think I see your point. What
2 is the actual title of the report? Does it cover
3 just the asbestos litigation or are there other
4 topics?

5 MR. FOSCO: The title is -- and, Mr. MacBride,
6 I believe I can read that in the public record,
7 correct?

8 MR. MacBRIDE: That's fine.

9 MR. FOSCO: Illinois Power Asbestos Bodily
10 Injury Claimant Demographic Analysis - March 2002,
11 and it is marked confidential, prepared by MMC
12 Enterprise Risk and it is a 30 -- the report itself
13 is 29 numbered pages, 29 numbered pages which
14 includes the beginning and the table of contents
15 which is two pages.

16 MR. MacBRIDE: Judge, if I could address this
17 further, as I understand at least part of the
18 history here, I am looking at Mr. Sullivan's
19 surrebuttal testimony, this report was cited by a
20 Dr. Haas in his direct testimony and again in his
21 rebuttal testimony. He quoted certain parts of it,
22 I think, in both pieces of testimony he thought were

1 appropriate. Mr. Sullivan, I think, is responding
2 directly in his surrebuttal testimony to Dr. Haas's
3 use of the report in Dr. Haas's rebuttal, so I guess
4 I have two points. One is again the witnesses have
5 had the opportunity to cite the specific portions
6 that they thought were relevant to their arguments
7 and to their testimony; and, second, I guess we feel
8 somewhat unfairly surprised at this point, given
9 that Dr. Haas apparently thought this report or some
10 part of it was significant as early as his direct
11 testimony and then again in his rebuttal testimony.
12 You know, I am a little dismayed now, after all the
13 testimony has been filed, to have a motion to admit
14 the entire report which again makes it available for
15 any party to cite for any purpose in their briefs.

16 MR. FOSCO: Your Honor, we did not have any
17 statement saying this report was of little value
18 until Mr. Sullivan's surrebuttal testimony. So I
19 don't know how I was supposed to do this between
20 Thursday and today. I am not sure why Mr. MacBride
21 is dismayed. I mean, I can't help surrebuttal, when
22 it comes in.

1 JUDGE ALBERS: How would you want this marked?
2 As a cross exhibit?

3 MR. FOSCO: Yeah, I would want it marked as, I
4 guess, ICC Staff Cross Exhibit 1.

5 JUDGE ALBERS: Well, the report is what it is.
6 It hasn't changed over the course of the proceeding,
7 and I think you both make good points but I think,
8 Mr. Fosco, you have convinced me. Certainly I am
9 willing to accord it proprietary treatment. So with
10 that --

11 MR. FOSCO: Your Honor, do I hand three copies
12 to the court reporter?

13 JUDGE ALBERS: One for me, one for her.

14 MR. FOSCO: And I will ask that when I named
15 it, it should state proprietary.

16 JUDGE ALBERS: Oh, yes.

17 MR. MacBRIDE: Judge, could you clarify the
18 purpose for which this report is being admitted?

19 JUDGE ALBERS: I think as Mr. Fosco indicated,
20 Mr. Sullivan has indicated that the value of the
21 report is in question. I think Mr. Fosco is
22 providing it to the Commission for the Commission to

1 assess for itself the value of the report. Mr.
2 Fosco, did I characterize your statements properly?

3 MR. FOSCO: No, I think you correctly
4 summarized what I stated.

5 MR. MacBRIDE: It is being admitted solely for
6 the purpose of allowing parties to use it to attempt
7 to contradict or impeach Mr. Sullivan's testimony
8 that the report is of little value, is that a fair
9 characterization?

10 JUDGE ALBERS: Well, I don't recall Mr. Fosco
11 indicating that it was his intent to offer it for
12 that purpose.

13 MR. FOSCO: This is the report relied on by the
14 witness as it has been discussed in the record
15 already. It is mentioned in a number of pieces of
16 testimony and now there is three courses in the
17 record. It has been used by various witnesses, I
18 think, for various purposes and I think it would go
19 to all those, actually.

20 MR. MacBRIDE: Well, my concern and part of my
21 objection is that there may be statements in this
22 report that have, you know, not only not been cited

1 by any witness but really have nothing to do with a
2 particular point any witness having made yet,
3 someone might feel have some bearing on other
4 arguments to be made on the recoverability of
5 asbestos costs, for example.

6 JUDGE ALBERS: Well, and if someone does try to
7 use it for that purpose, I am sure I would see an
8 appropriate motion to strike that portion of the
9 brief or whatever else relief someone thinks is
10 appropriate. I am not suggesting by admitting this
11 that it is free for any and all uses.

12 MR. MacBRIDE: Well, agreed, and that's why I
13 am suggesting that it would be appropriate, number
14 one, for it to be admitted for a specific and
15 limited purpose and, number two, suggesting that if
16 the proponent of this exhibit has not offered it,
17 has not -- ought to have the obligation to state a
18 specific and limited purpose for which it is
19 offered. Now in attempting to characterize what you
20 said, I suggested a specific, limited purpose which,
21 given the ruling you have made over our objection,
22 we would find an appropriate limitation.

1 JUDGE ALBERS: Standing here right now I cannot
2 recall all the purposes for which you recited this
3 in the testimony. But to the extent that someone
4 attempts to use the report in a manner consistent
5 with how it was used -- as it has previously been
6 used, you know, I would consider that. Certainly if
7 someone has an objection to that use, please bring
8 it to my attention and I will consider that as well.
9 Does that address your concern for the time being?

10 MR. MacBRIDE: Yes.

11 MR. FOSCO: Your Honor, I haven't given copies
12 to anybody else just because I don't know who else
13 is entitled to see it. But I do have copies if
14 Mr. MacBride -- if anyone here wants it,
15 Mr. MacBride should refer them to me and I can
16 provide them with one.

17 MS. SATTER: I have a question.

18 MR. FOSCO: And I am sorry but with that I
19 would be finished with my questioning of
20 Mr. Sullivan. Thank you very much.

21 MS. SATTER: I have a question about the use of
22 this exhibit. It appears that the other witnesses

1 have used this exhibit to discuss whether or not
2 rider recovery is appropriate and so it would seem
3 to me that that would be a fair use of the exhibit
4 in argument. I mean, that is the question on page 9
5 is Dr. Haas relies on the MMC Enterprise Risk Study
6 as support for a number of his contentions in his
7 testimony; do you believe it to be an appropriate
8 study for this case, and then he goes on and answers
9 the question. Some people might believe it is.
10 Obviously, Mr. Haas believes it is. Mr. Sullivan
11 believes it isn't. It would seem to me that once
12 the document is in the record, people should be free
13 to argue it.

14 JUDGE ALBERS: Again, without knowing exactly
15 what somebody would rely on in the report, it is
16 difficult for me to say what can or can't be used in
17 the report. To the extent that someone believes
18 that there is something in the report that is
19 consistent with what has already been -- consistent
20 with the manner that it has already been used, I
21 will take it under consideration. Certainly as I
22 indicated, if the Applicants believe there is some

1 use that is not consistent, then I will consider
2 that as well. I just, without nothing more what's
3 in the report, I can't be more specific.

4 MS. SATTER: Okay. So we will just have to
5 see. Everybody has to read it and make that
6 decision ultimately. We can just present it to you.

7 JUDGE ALBERS: Yes.

8 (Whereupon ICC Staff
9 Cross Exhibit 1 was
10 marked for purposes of
11 identification as of
12 this date and admitted
13 into evidence.)

14 MR. FLYNN: I have a different question now.
15 You admitted Mr. Sullivan's rebuttal and surrebuttal
16 testimony subject to, among other things,
17 consideration of whether his quotations in the
18 report should be afforded proprietary treatment. I
19 thought I heard you say now to Mr. Fosco or
20 Mr. MacBride that the report would be afforded
21 proprietary treatment. Does that mean that we have
22 resolved the issue with respect to whether those

1 portions of Mr. Sullivan's rebuttal and surrebuttal
2 should also be afforded proprietary treatment?

3 JUDGE ALBERS: Well, with regard to the
4 rebuttal testimony of Mr. Sullivan, I believe one of
5 the objections to proprietary treatment was that
6 there wasn't any particular reference to any details
7 in the report.

8 MS. SATTER: It was in the rebuttal.

9 JUDGE ALBERS: In the rebuttal. With regard to
10 the surrebuttal I believe there was the quote and
11 there is a number cited. In my mind anyway those
12 are going to be different types of consideration and
13 I do not intend to imply that I have somehow
14 resolved the objections to what's been in the
15 testimony. At this point in time I would consider
16 the report itself and the contents perhaps entitled
17 to more proprietary treatment so to speak than
18 what's in the testimony. I am not prepared at this
19 time to tell you that I have decided how to treat
20 the testimony language that's been brought into
21 question. But as far as the report itself, I don't
22 think anyone has objected to the proprietary

1 treatment of the report and I am comfortable
2 according it such treatment. Does that help at this
3 point in time?

4 MR. FLYNN: It helps.

5 JUDGE ALBERS: Probably not the answer you are
6 looking for.

7 MR. FLYNN: Moving towards it.

8 JUDGE ALBERS: With that I do have a few
9 questions for Mr. Sullivan.

10 EXAMINATION

11 BY JUDGE ALBERS:

12 Q. Just to begin with, Mr. Sullivan, I want to
13 make sure I understand how certain parts of the HMAC
14 Rider as it appears in Exhibit 45.1 would function,
15 how it would operate. Hypothetically, if base rate
16 recovery of asbestos litigation costs were set at a
17 million dollars and in year X costs were \$3 million,
18 would I be correct in thinking that during that
19 calendar year Ameren would pay the \$3 million, the
20 first million would come out of base rates and the
21 second two million, so to speak, would come out of
22 the fund?

1 A. Correct.

2 Q. If during the reconciliation proceeding
3 before the Commission regarding that same year the
4 Commission found that the total of prudence costs
5 that year was just \$1 million, would Ameren put \$2
6 million back into the fund? How would that work?

7 A. Well, I am not sure it expressly covers
8 that situation, but I will tell you what my
9 understanding is.

10 Q. Okay.

11 A. Under that scenario, one million -- we
12 incurred three million actually during the
13 reconciliation period. One million is in base
14 rates. There is two million left. The Commission
15 found of that two million that one million wasn't
16 prudent. Ameren would eat one million and one
17 million would come out of the fund.

18 Q. But if the Commission found that two
19 million were imprudent, so only one million was
20 prudent, and that two million had already been paid
21 out of the fund, will the fund be reimbursed, is
22 what I am trying to determine?

1 A. I am not sure we expressly provided for
2 that in the rider.

3 Q. So we are not sure at this point how it
4 would work?

5 A. Right.

6 Q. I get the impression, I think I am correct
7 in believing, that one of your primary concerns here
8 with the HMAC Rider is making sure that costs are
9 recovered?

10 A. Uh-huh.

11 Q. My confusion, though, is if costs are
12 legally recoverable, does it matter whether they are
13 recovered through a rider or recovered through base
14 rate? Because if you are legally entitled to
15 recovery, you will get the money. So I guess the
16 question is then why is the rider the better
17 alternative for recovery of what everyone would
18 agree would be legally recoverable costs?

19 A. I think it is preferable for two reasons.
20 One reason we have all talked about and that is to
21 take care of the regulatory lag. Costs are
22 recovered on a naturally accrued basis. The second

1 benefit to the Company, and again the Company -- the
2 one thing we can agree on, Ameren had nothing to do
3 with the incurrence of this liability. It is
4 acquiring IP. We have to make a business decision
5 on whether we want to buy this company. The reason
6 we are asking for this rider is because we believe
7 it gives us some long term protection of the
8 recoverability of these costs over the long term,
9 and that's the protection we are seeking from the
10 rider.

11 Q. I am just confused, though, as to why -- I
12 don't blame anyone for trying to look ahead and try
13 to protect themselves from future problems. But if
14 they are -- if the costs are recoverable --

15 A. Maybe that's the question. We are trying
16 to make -- we would appreciate the Commission's
17 determination that they are recoverable.

18 Q. Maybe I misheard one of your prior answers.
19 I thought, perhaps incorrectly, but I heard you tell
20 Mr. Fosco that you were concerned about getting the
21 rider approved and not the costs approved. If that
22 is not correct, please correct me.

1 A. I think that's correct.

2 Q. Okay. Then wouldn't the cost approval come
3 later through either a prudency review under the
4 rider or a rate case?

5 A. I think the rider itself is a determination
6 by the Commission that the costs are generally
7 recoverable. Absent the rider, I don't know how the
8 Commission makes that decision in this proceeding.
9 This is not a rate case.

10 Q. No, I am not suggesting it is.

11 A. And therein lies the dilemma.

12 Q. Another question to make sure I understand
13 how the rider would function, I believe you indicate
14 in your rebuttal testimony that Ameren is willing to
15 modify the HMAC Rider so that punitive damages are
16 not recoverable, is that correct?

17 A. Correct.

18 Q. Is it possible that in a settlement of
19 asbestos litigation that a certain portion of
20 settlement would be considered punitive damages?

21 A. Well, I guess in any settlement agreement
22 the parties are free to call damages whatever they

1 would like to call them in a settlement agreement.

2 Q. Okay. I guess what I am getting at is when
3 it comes time for the prudence review by the
4 Commission, is there a way for the Commission to
5 know if any parts of the settlement is considered
6 punitive damages and therefore wouldn't be
7 recoverable through the rider?

8 A. Conclusively, no. But I would also suggest
9 that the Commission wouldn't be bound by what the
10 settling parties called the amount of that
11 settlement agreement.

12 Q. Then from that statement then is it
13 possible if Ameren and a claimant settled for, say,
14 \$10 million during the prudence review, the
15 Commission, regardless of what they called that \$10
16 million, the Commission could find that seven
17 million was punitive and therefore not have it pass
18 through the rider?

19 A. I think that is certainly theoretically
20 possible.

21 Q. Okay. What should the Commission consider
22 in determining the prudence of any asbestos-related

1 litigation settlement? I mean, how should the
2 Commission look at the decisions by the attorneys?

3 A. There are a number of factors; I am not
4 sure I can list them all. But I can tell you the
5 process I go through in deciding what amount I might
6 settle a case for. The nature of the injury, the
7 nature, is it lung cancer, is it mesothelioma, is it
8 some other disease, the amount of time that that
9 particular plaintiff spent on our premises.

10 Typically these workers go from job to job to job to
11 job. And then standard things you would look at in
12 such an action, are there dependents, what are the
13 lost wages of the person, what are the medical
14 expenses of the person, and those all add up to --
15 it's that and other factors. I certainly can't list
16 them all. But those are certainly some factors I
17 would consider in determining whether a settlement
18 was reasonable.

19 Q. Would the Commission be able to determine
20 those factors for itself when it reviewed the
21 prudency?

22 A. If it so chose, I would think it could ask

1 the Company to turn over the evidence that it had
2 when it made the settlement determination, yes, in
3 the prudency review.

4 Q. Right. I think you touched on this with a
5 prior party's counsel. I just don't remember which.
6 If the asbestos litigation costs were volatile, why
7 was some similar HMAC Rider not considered or at
8 issue in the CILCO and CIPS mergers?

9 A. Well, when the CIPS took place, no asbestos
10 lawsuits had been filed against Illinois utilities.
11 When the CILCO transaction took place, the number of
12 lawsuits that they had had filed against it were a
13 very small number, and again I think that's largely
14 a function of the number of power plants that a
15 utility has owned.

16 Q. Okay. So just given some unique factors
17 about IP?

18 A. Absolutely. I don't want to restrict you
19 to a figure of speech. There are other factors
20 here, too. Again this is an asset we are trying to
21 acquire that no longer has within it the assets that
22 are the basis for the liability. I think that

1 causes two issues. If you believe someone's
2 testimony, I believe the industrials, they suggested
3 that since we no longer owned those assets, that
4 asbestos costs in general are not recoverable. That
5 was not true with the CIPS or CILCO situation.

6 As to the recoverability, I am not sure
7 this is still relevant but it is relevant in the
8 economic determination by Ameren of whether we
9 should buy Illinois Power or not. Not only do we
10 have that liability and not the assets, we don't
11 have the earnings potential associated with those
12 assets either, and that is why in this case it is a
13 particularly significant, important issue for the
14 Company to have determined.

15 Q. Okay. Would it be fair to say that at this
16 point then in light of the differences between the
17 various current Ameren affiliates and the would be
18 IP affiliate that Ameren is not considering a
19 similar HMAC Rider for CILCO and CIPS or for that
20 matter UE at this time?

21 A. I can say that we are now currently
22 considering it without binding us into the future.

1 I would also add that with a literal \$20 million
2 bogey that we have created with our current offer, I
3 would think most other, if not all other, Illinois
4 utilities would have to think long and hard about
5 following in these footsteps.

6 Q. I just didn't know if the Commission should
7 maybe keep that in mind, make sure they got it right
8 the first time if they are inclined to do this?

9 A. I would suggest they should get it right
10 the first time, but.

11 Q. Well, we all think they should.

12 A. It was articulated by the parties that once
13 this utility filed, then everyone else will join in.
14 I think with our current offer on the table, other
15 utilities will think long and hard before they try
16 and file similarly.

17 Q. I take it from your last comment you did
18 review Mr. Gorman's testimony?

19 A. Yes.

20 Q. He in his direct testimony indicated
21 that -- well, he states that IP in 2003 told the
22 Securities and Exchange Commission that IP didn't

1 think asbestos litigation should be a concern. Do
2 you agree that that's what IP told the SEC?

3 A. I don't have firsthand knowledge based on
4 what I have read. Subject to check I am willing to
5 accept that as true.

6 Q. Okay. My ultimate question is what changed
7 between IP saying to the SEC that asbestos
8 litigation shouldn't be a concern and where we are
9 at today?

10 A. I can't really speak on behalf of Illinois
11 Power. I know that when we look at the potential
12 liability within IP, it is something we decided now,
13 but I can't speak on behalf of Illinois Power.

14 Q. I understand that. From where does the 15
15 or \$20 million that Ameren proposes to contribute to
16 the HMAC Rider come?

17 A. It is my belief that in the final outcome
18 it will be shared by Dynegy and Ameren in funding
19 that amount.

20 Q. Okay. Will that affect either company's
21 retained earnings?

22 A. I guess -- it is a long time since I have

1 been an accountant. I guess it would.

2 Q. It would, okay. If you don't know this
3 next answer, just say.

4 A. Probably shouldn't have answered that last
5 one.

6 Q. Probably shouldn't have? Well, you
7 probably shouldn't answer the next question then, so
8 I won't even ask then. You wouldn't know what IP's
9 retained earnings would be after --

10 A. Not a chance.

11 Q. Do you know who might know the answer to
12 that?

13 MR. FLYNN: I am sorry, Your Honor. Your last
14 question that the witness apparently shouldn't have
15 answered was about Dynegy and this one was about IP.
16 Did you intend those?

17 JUDGE ALBERS: I did not mean to confuse those.

18 THE WITNESS: A. It is my understanding the
19 contribution would be from Dynegy and Ameren.

20 BY JUDGE ALBERS:

21 Q. Okay. And as far as at least on Ameren's
22 side of things, you are not sure whether that would

1 come out of the retained earnings?

2 A. I am not sure.

3 Q. And you don't know about the Dynegy side
4 anyway. So thank you for the clarification.

5 When you advocated including
6 asbestos-related insurance premiums in the HMAC
7 Rider -- and forgive me if this is something
8 Mr. Fosco, I wasn't sure if it was or not -- are
9 such insurance premiums currently recovered in IP's
10 base rates?

11 A. I could speak on that with the Ameren
12 companies. I believe generally our insurance
13 premiums are recoverable. But as I said, we have
14 little or no chance for any policies from '78
15 forward providing for asbestos recovery, and we have
16 no separable asbestos coverage policies at this
17 time.

18 Q. So you don't know then if IP recovers them
19 in their base rates?

20 A. No.

21 Q. That's all right.

22 A. I can assure you we would not be seeking

1 double recovery, one through the rider and one
2 through base rates.

3 JUDGE ALBERS: That's good. I was just trying
4 to figure out how it was working out.

5 I think that's all I have for you. Thank
6 you, Mr. Sullivan. Do you have any redirect?

7 MR. FLYNN: I think I will. The witness has
8 been on the stand now for almost two and a half
9 hours. I wonder if we could take five minutes?

10 JUDGE ALBERS: Yes, that's fine. We will
11 recess for five minutes.

12 (Whereupon the hearing
13 was in a short recess.)

14 JUDGE ALBERS: On the record.

15 MR. FLYNN: Yes, we have a few questions on
16 redirect.

17 REDIRECT EXAMINATION

18 BY MR. FLYNN:

19 Q. Mr. Sullivan, you were asked some questions
20 by Mr. Fosco and others, I believe, including the
21 judge, about over and under-recovery under your
22 proposal and how that would work. Do you recall

1 those questions?

2 A. Yes.

3 Q. And is there some limit to over-recovery in
4 a given year under your proposal?

5 A. Well, yeah. The over-recovery concept was,
6 as Mr. Fosco put it, if five is the amount in base
7 rates, then we only incur three, we kept two. But I
8 would suggest there is always a cap on the ability
9 to over recover and that is the amount that's in
10 base rates.

11 Q. So in your example if the base is five,
12 what's the cap?

13 A. Five.

14 Q. Is there a limit on under-recovery?

15 A. No.

16 Q. Judge Albers asked you some questions about
17 recovery or reimbursement of prudent costs from the
18 trust fund. Do you recall those questions?

19 A. Yes.

20 Q. Did you wish to clarify your answer to him
21 in any respect?

22 A. Well, I thought I was clear on this. Maybe

1 I wasn't. I certainly think in respect to the
2 punitive damages issue, I certainly think that it
3 would be within the wherewithal of the Commission
4 that if they see similar type defendant/plaintiffs,
5 that I have settled 200,000, 200,000, 200,000 or
6 otherwise similar like defendants in their facts and
7 circumstances, then all of a sudden what appears to
8 be a similar type plaintiff settles for \$12 million
9 , I would certainly think that would be an alarm
10 bell or an issue that the Commission would be open
11 to consider that a portion of that settle was
12 punitive damages.

13 Q. Judge Albers also asked you a question
14 about why Ameren seeks approval of a rider in this
15 proceeding. Do you recall that question in your
16 answer?

17 A. Yes, I do.

18 Q. Are there any reasons that you would like
19 to add in response to his question?

20 A. Yeah, I guess I read his question too
21 narrowly and simply looked at the risk profile
22 questions, the number of power plants that IP has

1 versus CILCO had, the non-existence of claims
2 against CIPS when they did that transaction. I
3 think I also identified that the earning potential
4 of the power plants of IP will be gone when we
5 acquire IP, but I guess perhaps -- and I don't know
6 where the judge was going with this -- perhaps I was
7 looking at that much too narrowly. This transaction
8 is much different than CIPS, much different than
9 CILCO in a few other ways, in that CIPS was a very
10 financially solvent company when we made that
11 acquisition. CILCO, although it had a sick parent,
12 sick financial parent, AES, CILCO was still
13 investment grade when we made that acquisition.

14 In this particular case, not only are we
15 faced with this potential material liability of
16 asbestos, we are dealing with a company we are
17 acquiring that is below investment grade. And as
18 part of the approval process in this case, we have
19 made the commitment to bring them to investment
20 grade and to make hundreds of millions of dollars of
21 inflow of cash into that company. And therefore I
22 think it is under the economic scene, it has nothing

1 to do with the recoverability of costs, but under
2 the economic scheme of do we purchase this company
3 and do we put all this money into this company and
4 do we bring them back to financial viability, I
5 think under that entire set of circumstances it is
6 reasonable to ask for some protection with respect
7 to asbestos liability.

8 Q. Did you intend to list volatility as a
9 reason for a rider?

10 MS. SATTER: Objection, that's a leading
11 question.

12 Q. Were there any other reasons that you
13 didn't list?

14 A. I think we can let that one rest.

15 JUDGE ALBERS: That would be wise.

16 BY MR. FLYNN: I don't blush.

17 Q. Mr. Fosco asked you a question about the
18 language in the proposed rider about the annual
19 review?

20 A. Yes.

21 Q. Do you recall that question?

22 A. Yes.

1 Q. Do you know how the language in your tariff
2 compares to the annual review language in the MGP
3 Rider?

4 A. I think it is very similar to the MGP
5 Rider.

6 MR. FLYNN: That is all we have.

7 JUDGE ALBERS: Any recross?

8 MR. FOSCO: One clarification.

9 RE CROSS EXAMINATION

10 BY MR. FOSCO:

11 Q. Mr. Sullivan, Mr. Flynn asked you if there
12 is a limit on under-recovery and you said your
13 answer was no. Is it correct that there is no limit
14 on under-recovery for costs that are found to be
15 imprudent?

16 A. To the extent that you mean imprudent if
17 they are not allowed to go through the rider, I
18 would agree with that.

19 Q. And there is no under-recovery whatsoever
20 for costs that are found to be prudent under your
21 proposal, under the rider?

22 A. That's correct. I think I was talking

1 about traditional ratemaking.

2 MR. FOSCO: Okay. Thank you.

3 JUDGE ALBERS: Any others?

4 MS. SATTER: I don't have anything more.

5 MR. WU: CUB has no further questions.

6 JUDGE ALBERS: Okay. One of your cross
7 questions responding to one of mine made me think of
8 something. Now for the life of me I can't think of
9 what it was.

10 MR. FLYNN: I like to think of them as
11 redirect. I believe that I only asked one question
12 that arguably could be characterized as cross.

13 JUDGE ALBERS: You are correct. One of your
14 redirect questions made me think of something, but
15 now I can't think of what it was. Okay. I will let
16 it go. All right. Thank you.

17 (Witness excused.)

18 MR. FLYNN: Mr. MacBride suggested to me,
19 despite my own proffering of 9:00 o'clock tomorrow
20 earlier, as to whether it would be helpful to start
21 at 10:00 in terms of allowing you some time to
22 consider the motions that are before you.

1 JUDGE ALBERS: Okay. I couldn't guarantee
2 being able to provide rulings by 10:00, but
3 certainly I will suspend that time doing that, you
4 know, working on those.

5 MR. MacBRIDE: Since I think we have agreed
6 there would be no hearing on Friday, reconvene
7 sometime, 1:00 o'clock, whatever, on Monday, I think
8 it would be beneficial to all if at all possible to
9 have rulings on the motions before we depart
10 tomorrow. I just think if the additional hour would
11 help --

12 JUDGE ALBERS: It would help. I just can't
13 tell you right now how much time it would take to
14 think through all of it.

15 MR. FLYNN: We understand.

16 JUDGE ALBERS: Is there anything further then
17 from anyone today?

18 MR. MacBRIDE: Well, so therefore what time are
19 we starting?

20 JUDGE ALBERS: Well, I thought you were coming
21 at 10:00 o'clock then. I will use that time to work
22 on those motions.

1 MR. FLYNN: We are fine.

2 JUDGE ALBERS: If there is nothing further
3 then, this matter is continued to 10:00 o'clock
4 tomorrow morning.

5 (Whereupon the hearing
6 in this matter was
7 continued until August
8 26, 2004, at 10:00 a.m.
9 in Springfield,
10 Illinois.)

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